

SPECIALTY ASSISTANCE CLAIM SERVICES, :
 INC., : CIVIL ACTION
 :
 Plaintiff, :
 :
 v. : No. 02-6553
 :
 COLIN LUKE ASSOCIATES, LTD., et al., :
 :
 Defendants. :
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Plaintiff, Specialty Assistance Claims Services, Inc. (“Specialty Assistance”), was an insurance claims servicing agent which provided a full service of claims administration functions, including, but not limited to, administering insurance plans and processing and

handling the review and payment of insurance claims.¹ On December 31, 1998, Specialty Assistance entered into an Administrative Services and Adoption Agreement (“Written Agreement”) with Colin Luke Associates, Ltd. (“Colin Luke”) and Certain Underwriters whereby Specialty Assistance was to serve as the claims administrator for the Anchor Health Care Plan (“the Plan”).² The Written Agreement, effective January 1, 1999, had a three year initial term (i.e. 1999-2001) and thereafter had automatic renewals for successive one year terms. The Written Agreement was in effect until December 6, 2000, at which time Specialty Assistance provided a Notice of Cancellation to the Defendants based upon their alleged breaches of the contract. In contravention to the terms of the Written Agreement, Specialty Assistance alleges that Colin Luke and Certain Underwriters failed to either make timely payment to medical providers or deposit funds into a special account that was set up for the purpose of allowing Specialty Assistance to pay the medical providers. Specialty Assistance also alleges that it was

¹ Specialty Assistance was a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business located in Doylestown, Pennsylvania.

² Colin Luke was a foreign corporation organized and existing under the laws of the Cayman Islands with its principal place of business located in the Cayman Islands. Certain Underwriters is a syndicate of insurance corporations all organized and existing under the laws of the United Kingdom with their principal places of business located in London, England. Cooper Gay is a foreign corporation organized and existing under the laws of the United Kingdom with its principal place of business located in London, England. Colin Luke entered into an agreement with Certain Underwriters to develop and sell a health care coverage plan in the Cayman Islands named the Anchor Health Care Plan under which Colin Luke acted as the cover-holder for Certain Underwriters. (Don Kissoon Decl., ¶ 2). The Plan was sold in the Cayman Islands, but also covered employees of Cayman Islands businesses who resided within the United States. (*Id.*). Certain Underwriters granted Colin Luke authority to bind Certain Underwriters contractually with regard to the administration and handing of the Plan. (*Id.*). Certain Underwriters appointed Cooper Gay to act as their intermediary broker between Colin Luke, its agent, and themselves as the principal. (*Id.*, ¶ 3).

not paid for the services that it rendered pursuant to the Written Agreement.³

After commencement of the performance of the obligations under the Written Agreement, Colin Luke sent several boxes of claims to Specialty Assistance's offices in Pennsylvania so that Specialty Assistance would input the claims into a specially designed computer program that was coordinated with Colin Luke's computer program. As a result of the review of the records contained within the boxes, Specialty Assistance discovered a discrepancy of approximately \$900,000 for the first quarter of 1999. Specialty Assistance reported the discrepancy. This resulted in Robert Pickup, a representative of Cooper Gay involved in the Plan, contacting Kevin MacDonald, former manager of Specialty Assistance, for the purpose of retaining Specialty Assistance to conduct an audit and reconciliation. Specialty Assistance agreed to perform the audit and provide Cooper Gay with a Reconciliation and Audit Report. Cooper Gay agreed to reimburse Specialty Assistance the costs associated with performance of the audit and reconciliation report ("Oral Agreement").

Pursuant to the Oral Agreement, Specialty Assistance sent personnel to Colin Luke's office in the Cayman Islands to perform the audit and attempt to discover the cause for the discrepancy. Assessing that the audit was too complex to be completed quickly, Specialty Assistance sent the documentation (approximately two tons of information) to its headquarters in Pennsylvania to continue its analysis. Specialty Assistance performed the audit over the course of several months and sent Cooper Gay intermittent reports during that time period. On January

³ Specialty Assistance alleges that Cooper Gay, in its intermediary role, controlled the flow of funds in relation to the Plan. Specialty Assistance also contends that Cooper Gay was responsible for paying Specialty Assistance for its services under the Written Agreement and refused to make such payments. During the calendar year 2000, payment disputes arose which culminated in Cooper Gay's negative criticism of Specialty Assistance to Certain Underwriters and nonpayment of fees to Specialty Assistance. Although not a party to the Written Agreement, Cooper Gay sent a notice of termination of the Written Agreement to Specialty Assistance.

17, 2000, Specialty Assistance sent Cooper Gay a Service Invoice amounting to \$469,640.55 for all of the audit and reconciliation work performed in accordance with the Oral Agreement. Specialty Assistance alleges that Cooper Gay did not pay for the services rendered by Specialty Assistance pursuant to the terms of the Oral Agreement.

Based upon the aforementioned, Specialty Assistance filed a Complaint on August 2, 2002. On February 4, 2004, Specialty Assistance filed an Amended Complaint. The Amended Complaint includes the following counts: Breach of Written Agreement; Breach of Oral Contract; Quantum Meruit; Unjust Enrichment; Account Stated; and Tortious Interference with Contractual Relations.

II. DISCUSSION

A. Personal Jurisdiction

“The determination of whether a district court has personal jurisdiction over an out-of-state defendant requires a two-part inquiry.” Carney v. Bill Head Trucking, Inc., 83 F. Supp.2d 554, 556 (E.D. Pa. 2000). “First, the court must determine whether the forum state’s long-arm statute permits the exercise of jurisdiction over the defendant.” Id. (citing Fed. R. Civ. P. 4 (e)(1); IMO Indus. v. Kiekert AG, 155 F.3d 254, 259 (3d Cir. 1998)). “Second, the court must determine whether the exercise of personal jurisdiction would be constitutional under the due process clause.” Id. (citing IMO Indus., 155 F.3d at 259). These two factors are conflated in Pennsylvania “as the Pennsylvania long-arm statute authorizes personal jurisdiction to the ‘fullest extent allowed under the Constitution of the United States.’” Id. (quoting 42 Pa. Cons. Stat. Ann. § 5322(b); Vetrotex Certainteed Corp. v. Consol. Fiber Glass Prods. Co., 75 F.3d 147, 150 (3d Cir. 1995)).

“The determination of whether personal jurisdiction satisfies the due process

clause depends upon the relationship among the defendant, the forum, and the litigation.” Id. (citation omitted). “To satisfy the due process clause, the defendant must have purposefully directed conduct toward Pennsylvania, or must have purposefully availed himself of the protection of the laws of Pennsylvania.” Id. (citation omitted). There are two independent bases for personal jurisdiction, specific jurisdiction and general jurisdiction. Id. “A defendant is subject to the specific jurisdiction of this Court when the events giving rise to the action are related to Pennsylvania and the defendant has necessary minimum contacts with Pennsylvania.” Id. (citing Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 414 n.8 (1984)). However, “a defendant can also be subject to the ‘general jurisdiction’ of this Court, regardless of the location of the events giving rise to the action, when the defendant’s contacts with Pennsylvania are continuous and systematic.”⁴ Id. (quoting Helicopteros, 466 U.S. at 414 n.9).

1. Specific Jurisdiction

“Specific jurisdiction exists when the plaintiff’s claim ‘is related to or arises out of the defendant’s contacts with the forum.’” Pennzoil Prods. Co. v. Colelli & Assocs., Inc., 149 F.3d 197, 201 (3d Cir. 1998)(quoting Mellon Bank (East) PSFS, Nat’l Assoc. v. Farino, 960 F.2d 1217, 1221 (3d Cir. 1992)). “To make a finding of specific jurisdiction, a court generally applies two standards, the first mandatory and the second discretionary.” Id. “First, a court must determine whether the defendant had the minimum contacts with the forum necessary for the defendant to have ‘reasonably anticipate[d] being haled into court there.’” Id. (quoting World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980)). “The issue of minimum contacts is rather fact-sensitive in that it turns on the ‘quality and nature of a

⁴ Since I find that this Court can assert specific jurisdiction over Certain Underwriters and Cooper Gay, I will not address the issue of general jurisdiction.

defendant's activity [in relation to the forum state].” Id. at 203 (quoting Max Daetwyler Corp. v. R. Meyer, 762 F.2d 290, 298 (3d Cir. 1985)). “A finding of minimum contacts demands the demonstration of some act by which the defendant purposely avail[ed] itself of the privilege of conducting business within the forum State, thus invoking the protection and benefits of its laws.” Id. (stating “if a nonresident defendant’s contact with the forum is simply fortuitous or the result of a single transaction, the minimum-contacts requirement has not been satisfied”).

“Second, assuming minimum contacts have been established, a court may inquire whether the assertion of personal jurisdiction would comport with fair play and substantial justice.” Id. at 201 (quotations and internal quotation marks omitted). Although this standard may be exercised at a court’s discretion, the Court of Appeals for the Third Circuit (“Third Circuit”) has generally chosen to engage in this tier of the analysis in determining inquires of personal jurisdiction. Id. (citation omitted).

a. Certain Underwriters at Lloyd’s, London

As mentioned earlier, Colin Luke was an agent authorized to contractually bind Certain Underwriters with regard to the administration and handling of the Anchor Health Care Plan. In 1998, Don Kissoon (“Kissoon”), former general manager of Colin Luke, traveled to Specialty Assistance’s offices located in Pennsylvania. While in Pennsylvania, Kissoon negotiated the terms of the Written Agreement with Specialty Assistance. Kissoon was informed that Certain Underwriters authorized his signing the Written Agreement on its behalf. As a result, Kissoon executed the Written Agreement at Specialty Assistance’s offices in Pennsylvania, therefore, binding Colin Luke and Certain Underwriters to its terms.

According to Specialty Assistance and Kissoon, the services provided under the Written Agreement were primarily performed at its offices located in Pennsylvania. Payment

pursuant to the Written Agreement was to be paid to Specialty Assistance in Pennsylvania. Colin Luke gathered claim information and sent the information to Specialty Assistance's offices in Pennsylvania on a weekly basis for approximately a two year time period. Additionally during that time period, Kissoon and Colin Luke staff conducted telephone conferences with Specialty Assistance approximately three times a day. Further, Cooper Gay conducted telephone conferences with Specialty Assistance approximately two or three times a week during the life of the Written Agreement (both Specialty Assistance and Cooper Gay provided Kissoon with summaries of these telephone conferences either by e-mail, fax or telephone). According to Kissoon, "[a]t all times, Colin Luke and Underwriters anticipated that the work to be performed by [Specialty Assistance] would be principally done in Pennsylvania and that payment by Underwriters for such services was required to be made to [Specialty Assistance] in Pennsylvania." (Kissoon Decl., ¶ 12).

In light of all of the contacts of Certain Underwriters, including its agents acting within the scope of their agency, with Pennsylvania from 1998 through 2000, I conclude that Certain Underwriters (specifically, St. Paul Syndicate Management, Ace Global Markets and Heritage Managing Agency Ltd.) created minimum contacts with Pennsylvania during their dealings with Specialty Assistance that they may reasonably have anticipated being haled into court in Pennsylvania.⁵ Specialty Assistance's cause of action, including all of the individual counts asserted against Certain Underwriters, arises from the activities of Certain Underwriters

⁵ St. Paul Syndicate Management and Ace Global Markets were apparently involved in the Plan, and the Written Agreement, from its inception. However, Heritage Managing Agency Ltd. did not become involved until February 2000. As a result, my specific jurisdiction analysis applies to Heritage Managing Agency Ltd. regarding the contacts that Certain Underwriters and its agents, Colin Luke and Cooper Gay, had with Pennsylvania from February 2000 until December 6, 2000.

directed toward the Commonwealth and the exercise of jurisdiction over Certain Underwriters in this action comports with traditional notions of fair play and substantial justice. Thus, I conclude that this Court can assert specific personal jurisdiction over Certain Underwriters.

b. Cooper Gay

1.) Oral Agreement

According to Specialty Assistance, a representative of Cooper Gay contacted Specialty Assistance in Pennsylvania by telephone seeking assistance in an audit and reconciliation matter regarding a large discrepancy that was discovered in Colin Luke's records. An Oral Agreement was reached between Kevin MacDonald, former manager of Specialty Assistance, and representatives of Cooper Gay. According to Specialty Assistance, the Oral Agreement was for the benefit of Cooper Gay, not for the benefit of Certain Underwriters through Cooper Gay's role as Certain Underwriter's agent, because Cooper Gay retained Specialty Assistance so that it could produce accurate claims reports to Certain Underwriters. Payment by Cooper Gay for the audit and reconciliation work was to be paid to Specialty Assistance in Pennsylvania.

In accordance with the Oral Agreement, Specialty Assistance traveled to Colin Luke's offices located in the Cayman Islands and reviewed its records. Assessing that the audit was too complicated to be quickly completed, Specialty Assistance transported the records to Pennsylvania in order to conduct the audit and reconciliation at its offices. Cooper Gay was aware that Specialty Assistance transported Colin Luke's documents to its offices in Pennsylvania and conducted most of the audit and reconciliation (which required, in part, individually going through boxes of claims, separating thousands of claims into categories and entering the audited claims into a computer system) in Pennsylvania. While conducting the audit

and reconciliation, Specialty Assistance and Cooper Gay were in contact with each other and Specialty Assistance sent Cooper Gay intermittent reports from its Pennsylvania offices.

In light of all of the contacts of Cooper Gay in relation to the Oral Agreement, I conclude that Cooper Gay created minimum contacts with Pennsylvania through its dealings with Specialty Assistance that it may have reasonably anticipated being haled into court in Pennsylvania. Specialty Assistance's cause of action regarding the Oral Agreement arises from Cooper Gay's activities directed toward the Commonwealth and the exercise of jurisdiction over Cooper Gay in this action comports with traditional notions of fair play and substantial justice. Thus, I conclude that this Court can assert specific personal jurisdiction over Cooper Gay regarding Specialty Assistance's claim for Breach of Oral Agreement.

2.) Tortious Interference with Contractual Relations

There is specific jurisdiction in relation to Specialty Assistance's Tortious Interference with Contractual Relations claim asserted against Cooper Gay based upon its actions pertaining to the Written Agreement. In relation to the Written Agreement, Cooper Gay, acting as an agent for Certain Underwriters, was in continual contact with Specialty Assistance through personal visits, telephone conferences, correspondence, faxes and e-mails during the duration of the Written Agreement. Cooper Gay was apparently in control of the flow of funds in relation to both the Plan and payment of Specialty Assistance. Cooper Gay was allegedly slow to pay or forward payment to Specialty Assistance for its services. According to Specialty Assistance, Cooper Gay negatively criticized it resulting in Cooper Gay sending a notice of termination of the Written Agreement to Specialty Assistance (even though Cooper Gay was not a party to the Written Agreement).

In light of Cooper Gay's contacts with Specialty Assistance in relation to the

intentional tort claim, I conclude that the brunt of the harm of this claim must have been felt by Specialty Assistance in Pennsylvania because its business is based in Pennsylvania. The claim is necessarily related to the Written Agreement which Specialty Assistance had entered into with Colin Luke and Certain Underwriters and which is the subject of the alleged tortious interference. The majority of Specialty Assistance's work performed pursuant to the Written Agreement, as well as the negotiation of the Agreement, was performed in Specialty Assistance's Pennsylvania offices. In relation to Cooper Gay's role as an intermediary broker regarding the Written Agreement, it was in constant contact with Specialty Assistance pertaining to the performance of the contract. Thus, it necessarily follows that the effects of any alleged intentional conduct by Cooper Gay intended to interfere with Specialty Assistance's contractual relations with Colin Luke and Certain Underwriters would have been felt in Pennsylvania. Thus, I conclude that this Court can assert specific jurisdiction over Cooper Gay regarding Specialty Assistance's Tortious Interference with Contractual Relations claim.

B. Forum Non Conveniens

"The Third Circuit has made clear that dismissal for forum non conveniens is the 'exception rather than the rule.'" In re Corel Corp. Inc. Sec. Litig., 147 F. Supp.2d 363, 365 (E.D. Pa. 2001)(quoting Lony v. E.I. DuPont de Nemours & Co., 935 F.2d 604, 609 (3d Cir. 1991)). "Dismissal for forum non conveniens involves a two-step analysis." Id. "First, a court must determine whether an adequate alternative forum exists to hear the case." Id. (citing Lacey v. Cessna Aircraft Co., 862 F.2d 38, 43 (3d Cir. 1988)). "If an adequate alternative forum exists, then the court must balance certain private and public interest factors." Id. (citing Piper Aircraft Co. v. Reyno, 454 U.S. 235, 241 (1981); Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 508-09 (1947)). "To overturn plaintiff's forum choice, the private and public factors must weigh heavily

on the side of dismissal.” Id. at 366 (quotation and internal quotation marks omitted). ““If, when added together, the relevant private and public interest factors are in equipoise, or even if they lean only slightly toward dismissal, the motion to dismiss must be denied.”” Id. at 365 (quoting Lacey v. Cessna Aircraft Co., 932 F.2d 170, 180 (3d Cir. 1991)).

1. Adequate Alternative Forum

Generally, “[t]he adequate alternative forum requirement is . . . satisfied where the defendant is amenable to process in the alternative jurisdiction.” Id. (citation omitted). England is an adequate alternative forum in this case because both Certain Underwriters and Cooper Gay are English corporations and are amenable to service in England.⁶ There is no indication that the remedy available in the English courts is less than adequate. As a result, I find that England is an adequate alternative forum.

2. Private and Public Interest Factors

Once the existence of an adequate alternative forum has been established, the focus shifts to the private and public interest factors. “When balancing the private and public factors, a plaintiff’s forum choice is accorded ‘considerable deference’ and ‘should rarely be disturbed.’” Id. (quoting Lony, 935 F.2d at 608-09). Thus, Specialty Assistance’s election to bring suit in its home forum of the Eastern District of Pennsylvania must be given due deference. “Dismissal would be appropriate only if trial of the action in Pennsylvania establishes ‘oppressiveness and vexation’ to [Defendant] ‘out of all proportion’ to plaintiffs’ convenience.”

⁶ It appears that the Cayman Islands may also be an adequate alternative forum in this case because Colin Luke was a corporation organized and existing under the laws of the Cayman Islands. However, since Colin Luke is in default and England provides an adequate alternative forum based upon the corporate status of Certain Underwriters and Cooper Gay, my forum non conveniens analysis will focus only upon England as an alternative forum. However, my analysis of the issue of forum non conveniens as it applies to England can be applied with equal force to the forum of the Cayman Islands.

Id. at 365-66 (quoting Piper, 454 U.S. at 241).

a. Private Interest Factors

“The defendant bears the burden of persuasion as to all elements of the forum non conveniens analysis, beginning with the private interest factors.” Id. at 366 (citing Lacey, 862 F.2d at 43-44). The private interest factors include the following:

the relative ease of access to sources of proof; availability of compulsory process for attendance of unwilling, and the cost of obtaining attendance of willing witnesses; possibility of view of premises, if view would be appropriate to the action; and all other practical problems that make trial of a case easy, expeditious and inexpensive.

Id. (citation omitted).

In this action, consideration of the private interest factors does not persuade me that Specialty Assistance’s choice of forum should be overturned. Addressing the first factor, Certain Underwriters and Cooper Gay argue that most of the material documentation in this action is located in England and the Cayman Islands which are beyond the subpoena power of this Court. At the oral argument, Glen H. Waldman, Esq. (“Waldman”), Specialty Assistance’s attorney, responded to this argument by stressing that the gravaman of this case concerns the work performed by Specialty Assistance and whether it is entitled to any compensation. Waldman asserted that as a result of the negotiations being held in Pennsylvania, as well as most of the work pursuant to the Written Agreement and Oral Agreement being performed here, the material records pertaining to the gravaman of the case are located in Pennsylvania, not England or the Cayman Islands. (Tr. 12/9/04, p. 45). In fact, Waldman claimed that 90 percent of the documents are located in Pennsylvania. (Id., p. 52). In light of the arguments by the Defendants and Specialty Assistance pertaining to the location of the material documentation in this action, I conclude that Certain Underwriters and Cooper Gay have not met their burden of showing this

private interest factor weighs heavily in favor of dismissal.

Turning to the second and third factors dealing with the issues surrounding appearance of willing and unwilling witnesses, Certain Underwriters and Cooper Gay argue that their material witnesses are located in England and the Cayman Islands beyond this Court's subpoena power. Specifically, Certain Underwrites states that at least seven material witnesses relevant to its defense would be absent and would not be easily compelled to testify should they decline to testify. Cooper Gay argues that its witnesses are located exclusively in the United Kingdom.⁷ During oral argument, Waldman argued that if the case was held in England then Specialty Assistance would have to transport approximately ten witnesses. Waldman pointed out that Kissoon, the former general manager of Colin Luke in the Cayman Islands, has stated that he would be willing to travel to Pennsylvania if the trial was held here. (*Id.*, p. 48). Waldman also stated that deposition testimony is a viable means in which Certain Underwriters and Cooper Gay could take relevant testimony of any witness who does not wish to travel to Pennsylvania. However, deposition testimony is also a viable means in which Specialty Assistance could take testimony from any of its witnesses who do not wish to travel. "While live testimony at trial might facilitate credibility evaluations by the factfinder, videotaped depositions and other forms of transmittal are routine." *Corel*, 147 F. Supp.2d at 366 (stating that "the need to resort to videotaped depositions, obtained through letters rogatory, should not mandate dismissal"). While the absence of compulsory process for unwilling witnesses is an important concern, I

⁷ Regarding Robert Pickup, a former Cooper Gay representative who was heavily involved in the Plan and allegedly played a key role in the Oral Agreement, Waldman asserts that Cooper Gay appears to be unaware of his whereabouts. (Tr. 12/9/04, p. 46). This, Waldman claims, means that Cooper Gay does not necessarily have any better access to him than Specialty Assistance. (*Id.*). Acknowledging that he would like to have Robert Pickup for this case, Waldman states that he does not need him to make the case. (*Id.*).

conclude that Certain Underwriters and Cooper Gay have not met their burden of showing that the second and third private interest factors weigh heavily in their favor.

With respect to the fourth factor, it does not have to be considered because there is no need to view any premises in this action. Finally, the consideration of Specialty Assistance's financial hardship if the case was conducted in the Cayman Islands or England rather than Pennsylvania implicates the final catch-all private interest factor. Waldman stated that Specialty Assistance is no longer in business and "Mr. MacDonald doesn't have the resources to go to [England] and sustain a two week or three week . . . trial." (Tr. 12/9/04, p 47- 48). Regarding the financial difficulty and hardship to Specialty Assistance if the action was to be tried in England, Waldman went on to state the following, "I don't think that he could prosecute the action in England . . . I don't think that he has the resources to do so." (Id., p. 52-53). "The plaintiff's financial situation [can] be considered in weighing dismissal on forum non conveniens grounds." Kristoff v. Otis Elevator Co., No. 96-4123, 1997 WL 67797, at * 2 (E.D. Pa. Feb. 14, 1997); see also Tannenbaum v. Brink, 119 F. Supp.2d 505, 512 (E.D. Pa. 2000). There is no evidence pertaining to the issue of financial hardship as it applies to Certain Underwriters or Cooper Gay. However, since both corporations are currently in existence and no issues have been raised regarding the financial impact of this action on either Defendant, it can be assumed that the financial burden would be much greater on Specialty Assistance if the forum was changed than on Certain Underwriters and Cooper Gay if the forum remained here. Considering the apparently dire financial circumstances that a change of forum to England or the Cayman Islands would have on Specialty Assistance, and due to the critical impact such circumstances would have on this action, I conclude that this private interest factor weighs in favor of Specialty Assistance's forum choice.

Upon analysis of the relevant private interest factors, Certain Underwriters and Cooper Gay have not met their burden of persuasion that the balance of the factors weigh heavily in the favor of dismissal. As previously explained, in order to overturn a plaintiff's choice of forum, the private and public factors must weigh heavily on the side of dismissal. Corel, 147 F. Supp.2d at 366. As such, consideration of the private interest factors does not support dismissal.

b. Public Interest Factors

Similar to the balancing of private interest factors, “[a] defendant also bears the burden to show that the public-interest factors support dismissal.” Corel, 147 F. Supp.2d at 367 (citation omitted). The public interest factors include the following:

the administrative difficulties flowing from court congestion; the local interest in having localized controversies decided at home; the interest in having the trial of a diversity case in a forum that is at home with the law that must govern the action; the avoidance of unnecessary problems in conflict of laws, or in the application of foreign law; and the unfairness of burdening citizens in an unrelated forum with jury duty.

Id. (quoting Piper, 454 U.S. at 241 n.6). “These factors reinforce deference to plaintiffs’ forum choice.” Id.

In this action, consideration of the public interest factors does not persuade me that Specialty Assistance’s choice of forum should be overturned. Regarding the “court congestion” factor, no party has submitted any evidence concerning this factor. This Court is aware of the level of congestion pertaining to its own docket, but there is no mention of what level of congestion the courts face in the Cayman Islands or England. However, I find that this case can be adjudicated here without undue administrative difficulties. Consequently, the issue of whether or not the docket of the Eastern District of Pennsylvania is more congested than the courts located in the Cayman Islands or England Canadian courts does not weigh towards

dismissal.

With regard to the “local interest” factor, Certain Underwriters argues that Pennsylvania’s interest in this case is nonexistent or minimal because the Defendants’ alleged conduct had no economic impact on Pennsylvania interests. Along these same lines, Cooper Gay asserts that it would be unfair to ask a Pennsylvania jury to adjudicate a dispute arising from the administration of health insurance plans for residents of the Cayman Islands simply because Specialty Assistance resided in Pennsylvania. During oral argument, Waldman stressed that Specialty Assistance is a Pennsylvania company that, for the most part, performed much of its obligations under the Written Agreement and Oral Agreement in Pennsylvania. Waldman also pointed out that Specialty Assistance is no longer in business allegedly due to the actions of the Defendants in this case. Waldman stated that in order to adequately perform its duties to the Defendants, Specialty Assistance “had to bulk up significantly.” (Tr. 12/9/04, p. 39-40). That is, Specialty Assistance had to rent additional space, hire additional employees and enter into additional contracts in Pennsylvania. Then, according to Waldman, when the Defendants “pulled the plug,” Specialty Assistance’s employees lost their jobs, Specialty Assistance lost its agreements, International Risk Management Group (a Pennsylvania company that was Specialty Assistance’s subcontractor who performed most of its work in Pennsylvania) did not get paid, and Mr. McDonald “lost his reputation in the industry in the State of Pennsylvania, where he lives.” (*Id.*, p. 40). Despite the arguments by Certain Underwriters and Cooper Gay that Pennsylvania does not have an interest in this action, I conclude that there is a local interest in this case. As such, this public interest factor does not weigh in favor of dismissal.

As for the public interest factors concerning the issues of having the trial of a diversity case in a forum that is at home with the law that must govern the action and the

avoidance of unnecessary problems in conflict of laws, or in the application of foreign law, neither Certain Underwriters, Cooper Gay nor Specialty Assistance address these issues.⁸

Certain Underwriters and Cooper Gay bear the burden of persuasion as to all elements of the forum non conveniens analysis, they have failed to meet their burden of showing that these public interest factors weigh heavily on the side of dismissal. As such, consideration of these public interest factors does not support dismissal.

After adding all of the relevant private and public interest factors, I find that the balance of factors does not weigh heavily on the side of dismissal. Applying the appropriate amount of deference to Specialty Assistance's choice of forum, dismissal is inappropriate in this action because trial of the action in Pennsylvania is neither oppressive nor vexatious to Certain Underwriters or Cooper Gay, and is not out of all proportion to Specialty Assistance's convenience. Under these circumstances, the Motions to Dismiss based upon forum non conveniens are denied.

C. Failure to State a Claim Upon Which Relief May be Granted

In considering all of the arguments for dismissal of Specialty Assistance's claims for failure to state a claim upon which relief may be granted, I have accepted all allegations in the pleadings as true and I have given Specialty Assistance the benefit of every favorable inference that can be drawn from those allegations. See Conley v. Gibson, 355 U.S. 41, 48 (1957); Wisniewski v. Johns-Manville Corp., 812 F.2d 81, 83 n. 1 (3d Cir. 1987). In so doing, I conclude that none of Specialty Assistance's claims should be dismissed at this stage of the litigation.

⁸ It is noted that the Written Agreement is governed by Pennsylvania law. (Written Agreement, ¶ 7.7.).

III. CONCLUSION

This Court has specific personal jurisdiction over Certain Underwriters and Cooper Gay regarding all of the claims Specialty Assistance has asserted against them. Therefore, the Motions to Dismiss filed by Certain Underwriters and Cooper Gay based upon the premise that this Court lacks personal jurisdiction are denied. The Motions to Dismiss based upon forum non conveniens are also denied. According the proper deference to Specialty Assistance's choice of forum, an examination of the relevant private and public interest factors does not require dismissal of this action. Lastly, I conclude that none of Specialty Assistance's claims should be dismissed at this stage of the litigation based upon the arguments by Certain Underwriters and Cooper Gay that Specialty Assistance has failed to state claims upon which relief can be granted.

An appropriate Order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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SPECIALTY ASSISTANCE CLAIM SERVICES,	:	CIVIL ACTION
INC.,	:	
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Plaintiff,	:	
	:	
v.	:	NO. 02-6553
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COLIN LUKE ASSOCIATES, LTD., et al.,	:	
	:	
Defendants.	:	
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ORDER

AND NOW, this 27th day of December, 2004, upon consideration of the Motion to Dismiss for Lack of Personal Jurisdiction, Forum Non Conveniens and Failure to State a Claim Upon Which Relief can be Granted filed by Certain Underwriters (Doc. No. 42) and Cooper Gay's Motion to Dismiss Amended Complaint Pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(6) or, in the alternative, forum non conveniens filed by Defendant, Cooper, Gay & Company, Ltd. (Doc. No. 47), the Responses, Replies and the arguments made during the December 9, 2004 oral argument, it is hereby **ORDERED** that the Motions are **DENIED**.

BY THE COURT:

<u>s/ Robert F. Kelly</u> Robert F. Kelly,	Sr. J.
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